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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.402 of 2001

APPELLANT — Amarsingh @ Bhulwa s/o Prabhu Gond, aged about 20 years, R/o Ujiyarpur, Tehsil & -P.S.H. Manendragarh, District-Koria(CG)

Versus

RESPONDENT — State of Chhattisgarh, Through P.S.H. Officer Manendragarh, District-Koria(CG)

Appearance:

Shri J.K.Shastri, counsel for the appellant.

Shri D.K. Gwalre, Additional Public Prosecutor for the State.

ORAL JUDGMENT
(17.05.2007)

SUNIL KUMAR SINHA, J

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 27.2.2001, passed in Sessions Trial No.366/2000 by the Additional Sessions Judge Manendragarh, District-Koria, whereby, the said Court after holding the appellant guilty of the offence punishable under Section 376 (1) (f) of IPC, sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.

The case of the prosecution is that on 14.4.2000, at about 10.00 pm, a marriage function was going on in the house of one Baijnath Singh (PW-5). The prosecutrix namely-Ku.Jagmatiya (PW-1), a girl aged about 8 years, had also gone to attend the function. The allegations are that when she was working in the marriage house, the appellant came over there and put her on his

lap and thereafter, took her in the *Badi* of the house, threw her on the ground, removed her under-wear and committed sexual intercourse against her. When the prosecutrix tried to make a noise, he gagged her mouth. After the incident, bleeding started coming out from the vagina, which stained her under-wear. The appellant, while leaving the place of occurrence, threatened the prosecutrix that if she will disclose the matter to her parents, he will beat her. The further case of the prosecution is that on account of the injuries received by the prosecutrix, she started limping and when her mother could notice abnormality in walking and also the depression, she asked the prosecutrix about it, then the prosecutrix after 2-3 days, narrated the matter to her mother namely-Mankunwar(PW-2), who narrated it to her husband namely-Dube Singh (PW-6). Thereafter, they went to Police *Sahayata Kendra*, Nagpur, where *Dehati Nalici* was recorded under Ex.P/1 on 18.4.2000 at about 20.10 hours, based on which, the first information report Ex.P/1-C was registered on the same day at about 20.30 hrs.

The prosecutrix was sent for medical examination to the Community Health Centre, Manendragarh, where she was examined by Dr.(Mrs.) Seema Chanpuria(PW-8), who prepared her report Ex.P/7. According to her, the prosecutrix was a girl aged about 8 years. There were no external injuries on her body. Her auxiliary hairs and pubic hairs were not developed and her breasts were also not developed. There were no injuries on the pubic area of the prosecutrix. However, there was tenderness along with reddishness on the libia majora. She noticed one vertical wound admeasuring 1 cm x 1/5cm x 1/5 cm on the fourchette, in which, the healing processes has begun. The examination of valva was painful and white liquid substance was found in valva. The hymen was ruptured and four radial wounds were present, whose margins were tendered and reddish and they bleed on touch. Valva was admitting one finger with great pains. During the course of further

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investigation, a sight plan was prepared under Ex.P/12 and under-wear as well as 2 slides prepared by the lady Doctor, while internal examination of the prosecutrix were sent for chemical examination to F.S.L. Sagar. The F.S.L. report was also received vide Ex.P/11. The appellant was arrested and was sent for medical examination. He was examined by Dr.S.N.Gupta(PW-4), who prepared his report Ex.P/3, according to which, the appellant was capable to perform sexual intercourse. After completion of usual investigation, charge sheet was filed against the appellant.

The learned Sessions Judge, after recording the evidence of prosecution witnesses and after examining the accused under Section 313 Cr.P.C. and after hearing the arguments of both the parties, held the appellant guilty of offence punishable under Section 376(1) (f) IPC and sentenced him as aforementioned.

It is against this judgment of conviction and order of sentence, the appellant has preferred this appeal.

The conviction of the appellant is based upon the testimony of prosecutrix- Jagmatiya(PW-1), her mother-Mankunwar(PW-2), her father-Dube Singh (PW-6) and Dr.(Mrs.)Seema Chanpuria (PW-8).

Learned counsel for the appellant argues that the conviction based upon the testimony of the prosecutrix and the medical evidence is not in accordance with law. He submits that the prosecutrix is an unreliable witness; therefore, her testimony should be disbelieved. He also argues that the prosecution could not establish that the prosecutrix was under 12 years of age, therefore, the appellant could not have been convicted under Section 376 (1) (f) IPC. In the alternative, he also argues that the conviction and sentence awarded to the appellant is too harsh and in the facts and circumstances of the case, if the appellant is held guilty of the offence under Section 376 (1) (f) IPC, his sentence be reduced to the minimum preferably to the period already

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undergone by him, which comes about 7 years in this case as the appellant is in jail since 20.4.2000.

On the other hand, learned counsel for the State opposes these arguments. He supports the judgment of conviction and order of sentence passed by the court below.

I have heard learned counsel for the parties at length and have also perused the records of the Sessions Trial.

So far as the age of the prosecutrix is concerned, the mother of the prosecutrix has said nothing about the age of the prosecutrix. However, it comes in the evidence of father of the prosecutrix- Dube Singh (PW-6) that his daughter was aged about 8 years. Apart from this, if we look into the contents of medical report dated 19.4.2000(Ex.P/7), it would appear that according to the clinical observation itself, her age has been determined as 8 years. Moreover, the contents of the report would also show that even the secondary sexual characters of the prosecutrix were not developed and auxiliary and pubic hairs were not present and her breasts were also not developed. Her internal examination would also show that the characteristics of a tender girl were present in this case. Apart from these 2 sets of evidence, no other evidence has been collected by the prosecution regarding the age of the prosecutrix. The father has not been cross examined regarding the age of his daughter. Even a single question has not been asked in the cross-examination regarding the age of the prosecutrix. Likewise, the Doctor has also not been cross-examined on such point. According to these two sets of evidence, it can be inferred that the prosecutrix was a girl about 8 years of age and certainly, her age was under 12 years on the date of incident and the Sessions Court has committed no error of law in recording such a finding against the appellant.

So far as the question of rape is concerned, the prosecutrix (PW-1) had deposed vide paragraphs 1 and 2 of her evidence that on the fateful night, she was working in the marriage house of

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Baijnath Singh (PW-5). The appellant came over there and after taking her in his lap, he took her towards the *Badi*, where he put off her under-wear and thereafter he penetrated his penis into her vagina. When she tried to make a noise, the appellant ran away from the place of occurrence. She had also deposed that the penetration was painful. She had further deposed that thereafter, the blood started oozing from her vagina and her clothes got stained. She had also deposed that she had gone to Police *Sahayata Kendra*, Nagpur for lodging the report and thereafter, she was sent for medical examination to the Doctor.

In the cross-examination of the prosecutrix, the defence has tried to bring on record that the relations between 2 families were not cordial, due to which, a false report has been lodged. The prosecution has also tried to bring some omissions in her statement, which are pertaining to minor discrepancies and in reply to that nothing could be brought on record against the testimony of the prosecutrix, and her that part of deposition remains intact, in which, she stated that the appellant had took her towards the *Badi* of the marriage house and thereafter, he committed sexual intercourse against her by penetrating his penis into her vagina.

This story deposed by the prosecutrix is supported by the evidence of mother-Mankunwar(PW-2), who deposed that after 4-5 days of the said marriage function, she could notice that the girl was limping and she was also silent, on which, she asked the girl, who narrated that on the fateful night, the appellant had taken her towards the wall and thereafter he committed sexual intercourse against her. She had also complained regarding pain in her vagina to her mother. The mother deposed that the girl had also told her that at the time of commission of sexual intercourse, the appellant had gagged her mouth and he had also told her not to disclose the matter to the mother, therefore, the girl had disclosed the matter after 4-5 days of the incident.

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This evidence of mother of the prosecutrix is further supported by the evidence of father-Dube Singh(PW-6), who had also deposed almost similar incident, which was deposed by the mother. Further the said evidence is corroborated by the medical evidence of Dr.(Mrs.) Seema Chanpuria(PW-8), who has proved her report vide Ex.P/7 and had stated that the hymen of the girl was ruptured and there was an injury on the fourchette and there were other suggestive factors as are disclosed in the earlier part of the judgment.

The status of the victim of a rape case is equivalent to the status of an injured witness and the evidence of an injured witness and the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offender is entitled to great weight, absence of corroboration notwithstanding. Please see ***Bharwada Bhoginbhai Hirjibhai – Vs – State of Gujarat, AIR 1983 SC 753*** and ***State of Tamil Nadu –Vs.· Ravi @ Nehru 2006 (7) SBR 264***.

It is a settled principle of law that overmuch importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses. Please see ***Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat AIR 1983 S.C. 753***.

In view of the above legal position and also in view of the evidence of the prosecutrix, her mother, father and the lady Doctor, there appears to be no infirmity in the above finding recorded by the Sessions Court that the appellant had committed sexual intercourse against the prosecutrix on the fateful night, by which, she received injuries on her private parts. The version of

the prosecutrix inspires confidence of this Court and it was sufficient to base the conviction. However, as stated above, the same is duly corroborated by medical evidence as also the evidence of other witnesses, which are in addition to it, therefore, the conviction of the appellant under Section 376 (1) (f) IPC cannot be interfered and the same is maintained.

So far as the quantum of sentence is concerned, learned counsel for the appellant argues that both the parties were residents of same village. He also argues that the appellant was aged about 20-22 years at the time of incident and the girl was aged about 8 years. His submission is that the appellant is in jail since the very first day of his arrest i.e. 20.4.2000 and looking to the long detention without any break and further looking to the age of both the parties; his sentence may be reduced to the minimum.

In the matter of ***State of Chhattisgarh Vs. Derha, (2004) 9 SCC 699***, rape was committed against a girl aged about 8 years and the accused was aged about 18 years on the date of incident and he had also served about 6 ½ years imprisonment consequent to the sentence imposed on him and was having a family. In such circumstances, the Apex Court, vide Para 8 of the judgment, while allowing the appeal of the State and setting aside the judgment of the High Court, reduced the sentence to 7 years R.I.

Learned counsel for the appellant submits that the same principle may be applied in this case.

The submission made by learned counsel for the appellant appears to be reasonable.

In this case also, the appellant is continuously in jail since 20.4.2000 and he had undergone more than 7 years till now, therefore, looking to the age of the appellant and prosecutrix on the date of incident and further looking that both were residents of same village and also the fact that the appellant is neither a previous convict nor he has been shown to be the habitual

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offender, in the opinion of this Court, the ends of justice would be served if his sentence is also reduced from 10 years R.I. to 7 years R.I.

In the result, the appeal is partly allowed.

The conviction of the appellant under Section 376(1)(f) IPC recorded by the trial Court is maintained. However, the sentence imposed against the appellant i.e. 10 years R.I. is reduced to 7 years R.I. The sentence of fine of Rs.500/- is maintained, failing to pay the amount of fine, the appellant shall undergo R.I. for 3 months more.

The appeal is allowed to the extent indicated above.

Sd/-
Sunil Kumar Sinha
Judge

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